HLS 10RS-1211 ENGROSSED

Regular Session, 2010

HOUSE BILL NO. 845

1

BY REPRESENTATIVE NOWLIN

TAX/SALES-USE, LOCAL: Provides relative to requirements for private contracts with agencies or firms for the collection of local sales and use tax

AN ACT

2 To amend and reenact R.S. 47:337.26(C) and (D)(1)(introductory paragraph) and (c) and to 3 enact R.S. 47:337.26(D)(3), (F), and (G), relative to collection of local sales and use 4 tax; to provide for requirements governing certain activities of private contractors; to prohibit the sharing of certain taxpayer information; to provide with respect to 5 6 contracts; to provide for oversight by the legislative auditor; and to provide for 7 related matters. 8 Be it enacted by the Legislature of Louisiana: 9 Section 1. R.S. 47:337.26(C) and (D)(1)(introductory paragraph) and (c) are hereby 10 amended and reenacted and R.S. 47:337.26(D)(3), (F), and (G) are hereby enacted to read 11 as follows: 12 §337.26. Contracts for purposes purposes relating to collection of sales and use 13 taxes 14 15 C.(1) Any private agency or auditing firm hired for the purposes of this 16 Section and any employee, contractor, or other agent of such private agency or 17 auditing firm shall be governed by the provisions of R.S. 47:1508 et seq. 18 (2)(a) Audit leads provided by the private agency or auditing firm shall be subject to the taxpayer confidentiality requirements of R.S. 47:1508 et seq. Once 19 20 confidential information has been disclosed by the taxpayer to the private agency or

Page 1 of 5

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

1	auditing firm, audit leads by such private agency or auditing firm to other local
2	collectors are strictly prohibited under the taxpayer confidentiality requirements of
3	R.S. 47:1508 et seq; however, the taxpayer may voluntarily waive confidentiality
4	requirements in writing, authorizing the examination or audit to be expanded to
5	include additional tax collectors.
6	(b) The provisions of this Subsection shall be subject to the terms and
7	conditions of any information sharing or other exchange agreement with another
8	local collector or the Department of Revenue.
9	(3) Notwithstanding any provision of this Section to the contrary, a private
10	agency or auditing firm shall limit its activities to auditing the books and records of
11	the taxpayer and shall not perform any assessment or collection functions except as
12	otherwise expressly permitted by law.
13	(4) A lead auditor of a private agency or auditing firm performing an
14	examination or audit function shall possess or have attained any of the following:
15	(a) An active certified public accountant license;
16	(b) A bachelor's degree with a minimum of eighteen hours of accounting;
17	(c) An active certified tax examiner's certificate issued by the Louisiana
18	Association of Tax Administrators; or
19	(d) A minimum of ten years' experience in the field of state or local sales and
20	use tax.
21	D.(1) Prior to initiating an examination or audit of a taxpayer, a taxing
22	authority the local collector shall provide notice of the taxing authority's the intent
23	to audit which shall be sent by certified mail to the taxpayer at the taxpayer's last
24	known address. Such notice shall:
25	* * *
26	(c)(i) Advise the taxpayer of the right to review and copy the audit contract
27	if the audit will be conducted by a private auditing firm.
28	(ii) If the audit is conducted by a private auditing firm, the notice shall also
29	advise the taxpayer whether the payment of compensation to the private auditing

1

obtained by the private agency or auditing firm from the taxpayer in connection the audit or examination, whether written or in electronic form, shall be a the taxpayer, and the private agency or auditing firm shall not retain any such information. All taxpayer related information derived, compiled, or by the private agency or auditing firm in any form whatsoever, inclused schedules, working papers, and copies of information received from the shall be delivered to the tax collector, except to the extent such information retained by certified public accountants in accordance with the Louisian Accountancy Act. (b) No provision of this Section shall prohibit a private agency of firm from retaining books and records of a taxpayer until the termination of proceedings related to the audit or examination. F. Each contract entered into pursuant to this Section may be review and oversight by the legislative auditor pursuant to R.S. 33 contracts entered into after July 1, 2010, shall contain a statement by collector and private agency or auditing firm certifying that the terms and of the contract are in compliance with the requirements of the provision Section. Any contract that does not satisfy the requirements of this Section declared null and void by a court of competent jurisdiction. G. The private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency or auditing firm hired for the purposes of the including any employee.	2	the outcome of the audit.
obtained by the private agency or auditing firm from the taxpayer in connection the audit or examination, whether written or in electronic form, shall be a the taxpayer, and the private agency or auditing firm shall not retain any such information. All taxpayer related information derived, compiled, or by the private agency or auditing firm in any form whatsoever, inclusion schedules, working papers, and copies of information received from the shall be delivered to the tax collector, except to the extent such information retained by certified public accountants in accordance with the Louisian Accountancy Act. (b) No provision of this Section shall prohibit a private agency of firm from retaining books and records of a taxpayer until the termination of proceedings related to the audit or examination. * * * F. Each contract entered into pursuant to this Section may be review and oversight by the legislative auditor pursuant to R.S. 33 contracts entered into after July 1, 2010, shall contain a statement by collector and private agency or auditing firm certifying that the terms and of the contract are in compliance with the requirements of the provision Section. Any contract that does not satisfy the requirements of this Section declared null and void by a court of competent jurisdiction. G. The private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency of firm conducting such examination or audit, shall be subject to the	3	* * *
the audit or examination, whether written or in electronic form, shall be a the taxpayer, and the private agency or auditing firm shall not retain any such information. All taxpayer related information derived, compiled, or by the private agency or auditing firm in any form whatsoever, inclused schedules, working papers, and copies of information received from the shall be delivered to the tax collector, except to the extent such information retained by certified public accountants in accordance with the Louisian Accountancy Act. (b) No provision of this Section shall prohibit a private agency of firm from retaining books and records of a taxpayer until the termination of proceedings related to the audit or examination. * * * F. Each contract entered into pursuant to this Section may be review and oversight by the legislative auditor pursuant to R.S. 33: contracts entered into after July 1, 2010, shall contain a statement by collector and private agency or auditing firm certifying that the terms and of the contract are in compliance with the requirements of the provision Section. Any contract that does not satisfy the requirements of this Section declared null and void by a court of competent jurisdiction. G. The private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency of firm conducting such examination or audit, shall be subject to the	4	(3)(a) Upon completion of the audit or examination, all original information
the taxpayer, and the private agency or auditing firm shall not retain any such information. All taxpayer related information derived, compiled, or by the private agency or auditing firm in any form whatsoever, inclu schedules, working papers, and copies of information received from the shall be delivered to the tax collector, except to the extent such informati retained by certified public accountants in accordance with the Louisia Accountancy Act. (b) No provision of this Section shall prohibit a private agency of firm from retaining books and records of a taxpayer until the termination of proceedings related to the audit or examination. * * * F. Each contract entered into pursuant to this Section may be review and oversight by the legislative auditor pursuant to R.S. 33 contracts entered into after July 1, 2010, shall contain a statement by collector and private agency or auditing firm certifying that the terms and of the contract are in compliance with the requirements of the provision Section. Any contract that does not satisfy the requirements of this Section declared null and void by a court of competent jurisdiction. G. The private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency of firm conducting such examination or audit, shall be subject to the	5	obtained by the private agency or auditing firm from the taxpayer in connection with
such information. All taxpayer related information derived, compiled, or by the private agency or auditing firm in any form whatsoever, inclu schedules,working papers, and copies of information received from the shall be delivered to the tax collector, except to the extent such informati retained by certified public accountants in accordance with the Louisia Accountancy Act. (b) No provision of this Section shall prohibit a private agency of firm from retaining books and records of a taxpayer until the termination of proceedings related to the audit or examination. * * * E. Each contract entered into pursuant to this Section may be review and oversight by the legislative auditor pursuant to R.S. 33: contracts entered into after July 1, 2010, shall contain a statement by collector and private agency or auditing firm certifying that the terms and of the contract are in compliance with the requirements of the provision Section. Any contract that does not satisfy the requirements of this Section declared null and void by a court of competent jurisdiction. G. The private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency of firm conducting such examination or audit, shall be subject to the	6	the audit or examination, whether written or in electronic form, shall be returned to
by the private agency or auditing firm in any form whatsoever, inclused schedules, working papers, and copies of information received from the shall be delivered to the tax collector, except to the extent such information retained by certified public accountants in accordance with the Louisian Accountancy Act. (b) No provision of this Section shall prohibit a private agency of firm from retaining books and records of a taxpayer until the termination of proceedings related to the audit or examination. ** F. Each contract entered into pursuant to this Section may be review and oversight by the legislative auditor pursuant to R.S. 33: contracts entered into after July 1, 2010, shall contain a statement by collector and private agency or auditing firm certifying that the terms and of the contract are in compliance with the requirements of the provision Section. Any contract that does not satisfy the requirements of this Section declared null and void by a court of competent jurisdiction. G. The private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency of firm conducting such examination or audit, shall be subject to the	7	the taxpayer, and the private agency or auditing firm shall not retain any copies of
schedules,working papers, and copies of information received from the shall be delivered to the tax collector, except to the extent such informati retained by certified public accountants in accordance with the Louisia Accountancy Act. (b) No provision of this Section shall prohibit a private agency of firm from retaining books and records of a taxpayer until the termination of proceedings related to the audit or examination. F. Each contract entered into pursuant to this Section may be review and oversight by the legislative auditor pursuant to R.S. 33: contracts entered into after July 1, 2010, shall contain a statement by collector and private agency or auditing firm certifying that the terms and of the contract are in compliance with the requirements of the provision Section. Any contract that does not satisfy the requirements of this Section declared null and void by a court of competent jurisdiction. G. The private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency of firm conducting such examination or audit, shall be subject to the	8	such information. All taxpayer related information derived, compiled, or generated
shall be delivered to the tax collector, except to the extent such information retained by certified public accountants in accordance with the Louisian Accountancy Act. (b) No provision of this Section shall prohibit a private agency of firm from retaining books and records of a taxpayer until the termination of proceedings related to the audit or examination. * * * F. Each contract entered into pursuant to this Section may be review and oversight by the legislative auditor pursuant to R.S. 33: contracts entered into after July 1, 2010, shall contain a statement by collector and private agency or auditing firm certifying that the terms and of the contract are in compliance with the requirements of the provision Section. Any contract that does not satisfy the requirements of this Section declared null and void by a court of competent jurisdiction. G. The private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency of firm conducting such examination or audit, shall be subject to the	9	by the private agency or auditing firm in any form whatsoever, including audit
retained by certified public accountants in accordance with the Louisia Accountancy Act. (b) No provision of this Section shall prohibit a private agency of firm from retaining books and records of a taxpayer until the termination of proceedings related to the audit or examination. * * * * F. Each contract entered into pursuant to this Section may be review and oversight by the legislative auditor pursuant to R.S. 33: contracts entered into after July 1, 2010, shall contain a statement by collector and private agency or auditing firm certifying that the terms and of the contract are in compliance with the requirements of the provision Section. Any contract that does not satisfy the requirements of this Section declared null and void by a court of competent jurisdiction. G. The private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency of firm conducting such examination or audit, shall be subject to the	10	schedules, working papers, and copies of information received from the taxpayer,
13 Accountancy Act. 14 (b) No provision of this Section shall prohibit a private agency of firm from retaining books and records of a taxpayer until the termination of proceedings related to the audit or examination. 16 proceedings related to the audit or examination. 17 * * * * 18 F. Each contract entered into pursuant to this Section may be review and oversight by the legislative auditor pursuant to R.S. 33: 20 contracts entered into after July 1, 2010, shall contain a statement by collector and private agency or auditing firm certifying that the terms and of the contract are in compliance with the requirements of the provision Section. Any contract that does not satisfy the requirements of this Section declared null and void by a court of competent jurisdiction. 18 G. The private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency of firm conducting such examination or audit, shall be subject to the	11	shall be delivered to the tax collector, except to the extent such information may be
(b) No provision of this Section shall prohibit a private agency of firm from retaining books and records of a taxpayer until the termination of proceedings related to the audit or examination. * * * * F. Each contract entered into pursuant to this Section may be review and oversight by the legislative auditor pursuant to R.S. 33: contracts entered into after July 1, 2010, shall contain a statement by collector and private agency or auditing firm certifying that the terms and of the contract are in compliance with the requirements of the provision Section. Any contract that does not satisfy the requirements of this Section declared null and void by a court of competent jurisdiction. G. The private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency of firm conducting such examination or audit, shall be subject to the	12	retained by certified public accountants in accordance with the Louisiana Public
firm from retaining books and records of a taxpayer until the termination of proceedings related to the audit or examination. * * * * F. Each contract entered into pursuant to this Section may be review and oversight by the legislative auditor pursuant to R.S. 33: contracts entered into after July 1, 2010, shall contain a statement by collector and private agency or auditing firm certifying that the terms and of the contract are in compliance with the requirements of the provision Section. Any contract that does not satisfy the requirements of this Section declared null and void by a court of competent jurisdiction. G. The private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency of firm conducting such examination or audit, shall be subject to the	13	Accountancy Act.
proceedings related to the audit or examination. * * * * F. Each contract entered into pursuant to this Section may be review and oversight by the legislative auditor pursuant to R.S. 33: contracts entered into after July 1, 2010, shall contain a statement by collector and private agency or auditing firm certifying that the terms and of the contract are in compliance with the requirements of the provision Section. Any contract that does not satisfy the requirements of this Section declared null and void by a court of competent jurisdiction. G. The private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency of firm conducting such examination or audit, shall be subject to the	14	(b) No provision of this Section shall prohibit a private agency or auditing
17 * * * * * 18 F. Each contract entered into pursuant to this Section may be 19 review and oversight by the legislative auditor pursuant to R.S. 33: 20 contracts entered into after July 1, 2010, shall contain a statement by 21 collector and private agency or auditing firm certifying that the terms and 22 of the contract are in compliance with the requirements of the provision 23 Section. Any contract that does not satisfy the requirements of this Section 24 declared null and void by a court of competent jurisdiction. 25 G. The private agency or auditing firm hired for the purposes of the 26 including any employee, contractor, or other agent of such private agency of 27 firm conducting such examination or audit, shall be subject to the	15	firm from retaining books and records of a taxpayer until the termination of any legal
F. Each contract entered into pursuant to this Section may be review and oversight by the legislative auditor pursuant to R.S. 33: contracts entered into after July 1, 2010, shall contain a statement by collector and private agency or auditing firm certifying that the terms and of the contract are in compliance with the requirements of the provision Section. Any contract that does not satisfy the requirements of this Section declared null and void by a court of competent jurisdiction. G. The private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency of firm conducting such examination or audit, shall be subject to the	16	proceedings related to the audit or examination.
review and oversight by the legislative auditor pursuant to R.S. 33: contracts entered into after July 1, 2010, shall contain a statement by collector and private agency or auditing firm certifying that the terms and of the contract are in compliance with the requirements of the provision Section. Any contract that does not satisfy the requirements of this Section declared null and void by a court of competent jurisdiction. G. The private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency of firm conducting such examination or audit, shall be subject to the	17	* * *
contracts entered into after July 1, 2010, shall contain a statement by collector and private agency or auditing firm certifying that the terms and of the contract are in compliance with the requirements of the provision Section. Any contract that does not satisfy the requirements of this Section declared null and void by a court of competent jurisdiction. G. The private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency of firm conducting such examination or audit, shall be subject to the	18	F. Each contract entered into pursuant to this Section may be subject to
21 collector and private agency or auditing firm certifying that the terms and 22 of the contract are in compliance with the requirements of the provision 23 Section. Any contract that does not satisfy the requirements of this Section 24 declared null and void by a court of competent jurisdiction. 25 G. The private agency or auditing firm hired for the purposes of the 26 including any employee, contractor, or other agent of such private agency 27 firm conducting such examination or audit, shall be subject to the	19	review and oversight by the legislative auditor pursuant to R.S. 33:1427 and
22 of the contract are in compliance with the requirements of the provision 23 Section. Any contract that does not satisfy the requirements of this Section 24 declared null and void by a court of competent jurisdiction. 25 G. The private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency of firm conducting such examination or audit, shall be subject to the	20	contracts entered into after July 1, 2010, shall contain a statement by the local
Section. Any contract that does not satisfy the requirements of this Sectionary declared null and void by a court of competent jurisdiction. G. The private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency of firm conducting such examination or audit, shall be subject to the	21	collector and private agency or auditing firm certifying that the terms and conditions
 declared null and void by a court of competent jurisdiction. G. The private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency of firm conducting such examination or audit, shall be subject to the 	22	of the contract are in compliance with the requirements of the provisions of this
25 G. The private agency or auditing firm hired for the purposes of the including any employee, contractor, or other agent of such private agency of firm conducting such examination or audit, shall be subject to the	23	Section. Any contract that does not satisfy the requirements of this Section may be
26 <u>including any employee, contractor, or other agent of such private agency of firm conducting such examination or audit, shall be subject to the</u>	24	declared null and void by a court of competent jurisdiction.
firm conducting such examination or audit, shall be subject to the	25	G. The private agency or auditing firm hired for the purposes of this Section,
	26	including any employee, contractor, or other agent of such private agency or auditing
28 Governmental Ethics as set forth in R.S. 42:1101 et seq.	27	firm conducting such examination or audit, shall be subject to the Code of
	28	Governmental Ethics as set forth in R.S. 42:1101 et seq.

firm is contingent upon the actual collection of tax or in any other way dependent on

- 1 Section 2. The provisions of this Act shall apply to audits or examinations conducted
- 2 after the effective date of this Act.
- 3 Section 3. This Act shall become effective upon signature by the governor or, if not
- 4 signed by the governor, upon expiration of the time for bills to become law without signature
- 5 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
- 6 vetoed by the governor and subsequently approved by the legislature, this Act shall become
- 7 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Nowlin HB No. 845

Abstract: Requirements for private contracts for audit activities related to the collection of local sales and use tax, including taxpayer privacy protection, limitations on contractor activities, and specific provisions for contracts.

<u>Present law</u> authorizes any taxing authority to contract for the examination or investigation of businesses, tangible personal property, books, etc., of any taxpayer for purposes of enforcement and collection of any tax imposed by the taxing authority.

<u>Present law</u> requires the taxing authority to notify a taxpayer of an impending audit and provide information relating to the purpose of the audit, taxpayer rights, and identification of the entity conducting the audit.

<u>Proposed law</u> retains <u>present law</u> and adds additional requirements for contracts with private agencies or audit firms which include: limitations on the sharing of audit leads with other tax collectors, limitations related to the confidentiality of taxpayer records, credentials required for lead auditors, and disclosure of how the private agency or audit firm will be paid for its services.

<u>Proposed law</u> provides that contracts with private agencies or audit firms may be subject to review and oversight by the legislative auditor. Further, requires contracts entered into after July 1, 2010, to contain a certification by the local collector and contractor that the terms and conditions of the contract are in compliance with the requirements of the provisions of <u>proposed law</u>.

<u>Proposed law</u> provides for disposition of taxpayer records after the completion of the audit, and specifies that a private agency or auditing firm may retain taxpayer books and records until the termination of any legal proceedings related to an audit or examination.

<u>Proposed law</u> shall be applicable to audits commenced after the effective date of <u>proposed law</u>.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 47:337.26(C) and (D)(1)(intro. para.) and (c); Adds R.S. 337.26(D)(3), (F), and (G))

Page 4 of 5

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

Summary of Amendments Adopted by House

Committee Amendments Proposed by <u>House Committee on Ways and Means</u> to the <u>original</u> bill.

- 1. Added provision whereby a taxpayer may waive confidentiality requirements related to his records.
- 2. Limited the specific educational requirements to lead auditors only.
- 3. Added provision authorizing a private agency or auditing firm to retain taxpayer records until the termination of any legal proceedings related to an audit or examination.
- 4. Regarding the requirement of <u>proposed law</u> whereby the contracts must be in conformity with <u>proposed law</u>, added specification that such requirement applies to contracts entered into after July 1, 2010.